

STATE OF NEW YORK
SUPREME COURT

Pamela J. Vogel, Warren Co Clerk

COUNTY OF WARREN

In the Matter of the Petition of

MMSI PROPERTIES, LLC,

Petitioner,

-against-

NOTICE OF PETITION

Index No.:

Date Filed

№ 67317

WARREN-WASHINGTON ASSOCIATION FOR
MENTAL HEALTH, INC., THE CITY OF GLENS FALLS,
THE CITY OF GLENS FALLS PLANNING BOARD,

Respondents.

For an Order and Judgment Pursuant to CPLR Article 78
Vacating and Reversing the Granting of Site Plan Approval to
Respondent Warren-Washington Association for Mental
Health, Inc. by the City of Glens Falls/City of Glens Falls
Planning Board on the Basis That the Approval was Contrary to
the Intent and Clear Meaning of the City Zoning Ordinance,
Violated the Express Language of the City Zoning Ordinance,
and was Otherwise Arbitrary, Capricious and Unlawful.

PLEASE TAKE NOTICE that the petitioner, MMSI Properties, LLC, will move this Court at a Special Term thereof to be held in and for the County of Warren at the Supreme Court, Warren County Municipal Center, 1340 State Route 9, Lake George, New York on the 25th day of October, 2019 at 9:30 A.M. or as soon thereafter as can be heard, for an Order and Judgment pursuant to CPLR Article 78 vacating and reversing the granting of site plan approval to Respondent Warren-Washington Association for Mental Health, Inc. by the City of Glens Falls Planning Board which decision was arbitrary, capricious and unlawful.

AND TAKE FURTHER NOTICE, that answering affidavits, if any, must be served at least seven (7) days before the return date of this proceeding, pursuant to CPLR §2214(b) and CPLR §7804.

AND TAKE FURTHER NOTICE that demand is hereby made pursuant to CPLR §7804 that the respondent City and Planning Board submit a certified record to the Court with a copy to all parties prior to the return date of this proceeding.

Dated: October 1, 2019
Lake George, New York

Stafford, Carr & McNally, P.C.

By: 

Nathan Hall, Esq.

175 Ottawa Street

Lake George, New York 12845

(Phone): (518) 668-5412

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STATE OF NEW YORK
SUPREME COURT

Pamela J. Vogel, Warren Co Clerk

COUNTY OF WARREN

In the Matter of the Petition of

MMSI PROPERTIES, LLC,

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VERIFIED PETITION

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Violated the Express Language of the City Zoning Ordinance,
and was Otherwise Arbitrary, Capricious and Unlawful.

The petition of Elizabeth Miller, Member of MMSI Properties, LLC (hereinafter "MMSI"),
by its attorneys, Stafford, Carr & McNally, P.C., respectfully allege as follows:

1. That at all times relevant, the petitioner, MMSI is a domestic Limited Liability Company organized and existing under the State of New York with a principal place of business at 51 Walnut Street, Glens Falls, New York.
2. That at all times relevant, the petition was and is the owner of a certain piece of real property located at 51-57 Walnut Street, located in the City of Glens Falls, State of New York. The petitioner's real property is designated "X" on the map marked Exhibit "A," which is annexed to the petition and made a part hereof.

3. That upon information and belief, respondent the CITY OF GLENS FALLS, is a municipal corporation in the County of Warren, State of New York.

4. That upon information and belief, respondent the CITY OF GLENS FALLS PLANNING BOARD, is a duly constituted body of the City of Glens Falls charged with, *inter alia*, granting site plan approval of certain uses and projects in the City of Glens Falls as provided for in the City Zoning Code.

5. That upon information and belief and at all times relevant, the respondent, WARREN-WASHINGTON ASSOCIATION FOR MENTAL HEALTH, INC. (hereinafter "WWAMH") is a domestic not-for-profit corporation organized and existing under the laws of the State of New York with a principal place of business at 3043 State Route 4, Hudson Falls, New York.

6. That upon information and belief WWAMH is the owner or otherwise has an interest in the following two parcels of land (the "Subject Property"): (1) 47 Cooper Street, located in the City of Glens Falls, County of Warren, State of New York and bearing the tax map number: 303.13-19-17. This parcel is designated as "Y" on the map marked Exhibit "A." (2) 50 Cooper Street, located in the City of Glens Falls, County of Warren, State of New York and bearing the tax map number: 303.13-19-16. This parcel is designated as "Z" on the map marked Exhibit "A."

7. That in or about May, 2019, the respondent WWAMH filed an application for site plan review and approval with the City of Glens Falls and the City of Glens Falls Planning Board, in which they sought site plan approval to develop the Subject Property with a 29 unit facility for adults with Serious Mental Illness, homeless young adults, domestic violence survivors and the chronically homeless. (the "Project").

8. That on or about September 2, 2019, the City of Glens Falls Planning Board (the "Board") granted Respondent WWAMH site plan approval for the proposed development sought.

9. That the Petitioner, by its counsel, along with other members of the community at large, raised a number of objections to the project as proposed at the June 2019, July 2019, August 2019, and September 2019 meetings, which concerns were not addressed by the Respondent WWAMH nor adequately considered by Respondent Board.

10. That the Petitioner has been aggrieved by the decision of the Board granting site plan approval for the Project.

11. That for the reasons that follow the Planning Board failed to properly apply the Zoning Code to this application for site plan approval, and, as a result, its approval was contrary to the intent and clear meaning of the City Zoning Ordinance, violated the express language of the City Zoning Ordinance, and was otherwise arbitrary, capricious and unlawful.

FIRST CAUSE OF ACTION
(Code Provisions Discouraging Residential Use)

12. That the petitioner repeats and realleges the allegations contained in Paragraphs 1 through 11 as though fully set forth herein.

13. That the project is located in the Light Industrial District pursuant to the City Zoning Map and the determination of the City of Glens Falls Zoning Board of Appeals at its July 15, 2019 meeting.

14. That §220-20 of the City of Glens Falls Zoning Code governs specific provisions relating to properties located in the Light Industrial District.

15. That the purpose of the City of Glens Falls Zoning Code as a whole is "to minimize conflicts among uses of land and buildings, and to bring about the gradual conformity of uses of

land and buildings throughout the City to the well-considered plan herein set forth.” Glens Falls Zoning Code §220-2.

16. That consistent with this purpose, §220-20(A)(1) provides: “The general purpose and intent of this district is to identify areas that are appropriate for a wide range of commercial and industrial uses.”

17. That §220-20(A)(4) provides: “While there are some residential uses in the district, further expansion of those uses through construction of new residential structures should be discouraged in order to provide space for the commercial/industrial uses and to avoid conflicts in land use.”

18. That §220-20(A)(5)(c) provides: “In promoting the general purpose of this district, the specific intent of the district includes . . . to discourage new residential uses in those areas.”

19. That the language of the Glens Falls Zoning Code clearly indicates that the Board shall have the right to exercise its discretion in deciding whether any residential use, let alone a major residential project, is advisable at this site and that, barring some special circumstances, such residential use is inadvisable.

20. That it is Petitioner’s position that this codified language discouraging residential use puts the burden on any applicant seeking residential development in the light industrial district to convince the Board why this default language should be disregarded in a particular instance.

21. However, at the September 2019 meeting of the Board, the Planning Board improperly reversed the burden of persuasion and counsel to the Planning Board provided the Board with legal counsel that, *to wit*, this cautionary language notwithstanding, the Planning Board needed an independent basis apart from this caution against residential use in the light industrial district if a Board Member was to vote against the Project.

22. That it is respectfully submitted that this position is clearly in error and not in accordance with the codified language discouraging residential use. The position taken by the Board completely nullifies the code language discouraging residential use if the Board is not allowed to take it into consideration in making its decision outside of a separate deficiency in the application.

23. Based upon the foregoing, it is respectfully submitted that the position taken by Respondent Board that the Board could not legally exercise its discretion to disapprove the project in spite of the clear direction of the Zoning Code discouraging and cautioning further residential use in the light industrial district was contrary to the intent and clear meaning of the City Zoning Ordinance, violated the express language of the City Zoning Ordinance, and was otherwise arbitrary, capricious and unlawful,

SECOND CAUSE OF ACTION
(Change in Community Services Rendered)

24. The Petitioner repeats and realleges the allegations contained in Paragraph 1 through 23 as though fully set forth herein.

25. That the Respondent WWAMH represented to the Board that no services would be provided to its residents at the facility, but that it would act as a 'concierge' of sorts to connect its residents with the mental health or other behavioral professionals in the community.

26. That it is respectfully submitted that this was an important aspect of the discussion surrounding this project. Petitioner was unsuccessful in arguing before the City of Glens Falls and its various boards that this project was not a residential use and was akin to an institutional care facility in large part because Respondent WWAMH was adamant that all necessary services to its residents would come from facilities in the community.

27. That prior to the Board's approval of this project, it was announced that after four decades of helping the Warren and Washington Counties meet state-mandated requirements for outpatient mental health services, Glens Falls Hospital could not meet the demand for outpatient behavioral health services and substance abuse in the community and was looking to engage other behavioral health providers in the region. See, Glens Falls Hospital Press Release, "Glens Falls Hospital, Washington and Warren Counties Working to Increase Access to Outpatient Behavioral Health and Substance Use Services," dated August 30, 2019 (available at <https://www.glenfallshospital.org/about-us/press-releases/glens-falls-hospital-washington-and-warren-counties-working-increase-access-outpatient-behavioral-health-and-substance-use-services>). A copy of the article referenced herein is annexed hereto and labeled as Exhibit "B."

28. That it is respectfully submitted that, given the Applicant's reliance on service providers in the community for treatment of its vulnerable residents, this is a material change to the circumstances surrounding this application.

29. That the Board, through its interpretation and enforcement of the Zoning Code, is tasked with accomplishing the purpose set forth therein, *inter alia*, to "promote the public health, safety and general welfare [of the community] . . . with reasonable consideration, among other things, to the character of the district, its particular suitability for particular uses."

30. That the Board has neglected its duty by failing to consider the recently disclosed facts that: (1) Glens Falls Hospital declared "the need that exists today for outpatient behavioral health services is far greater than what Glens Falls Hospital can meet on their own;" (*Id.*) and (2) Glens Falls Hospital only intends to discontinue services to such vulnerable populations once another provider has been improved (see e.g., "Behavioral Health Providers look North as Glens Falls Hospital Announces Service Reduction," Times Union, September 6, 2019 (available at

<https://www.timesunion.com/news/article/Behavioral-health-providers-look-north-as-Glens-14420353.php>); “EDITORIAL: Hoping for Growth in Mental Health Services,” Post Star, September 27, 2019 (available at https://poststar.com/opinion/editorial/editorial-hoping-for-growth-in-mental-health-services/article_e68037f3-b54d-59cf-8012-c3febf2eed.html)). Copies of the articles referenced herein are annexed hereto and labeled as Exhibit “C.”

31. Based upon the foregoing, it is respectfully submitted that the Planning Board’s failure to consider the impact this project would have on the City’s overburdened health care industry, as well as the announced change in circumstances regarding Glens Falls Hospital’s withdrawal from the community’s behavioral/substance abuse services industry was contrary to the intent of the City Zoning Ordinance, violated the express language of the City Zoning Ordinance, and was otherwise arbitrary, capricious and unlawful.

THIRD CAUSE OF ACTION
(Stormwater)

32. That Petitioner repeats and realleges the allegations stated and contained in Paragraphs 1 through 31 as though fully set forth herein.

33. That §220-50, *et seq.* provides the City of Glens Falls’ stormwater standards and regulations relating to land development activities.

34. That §220-55(A) provides: “For the purpose of this article, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this article: (1) The New York State Stormwater Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the “Design Manual”; (2) New York Standards and Specifications for Erosion and Sediment Control, (Empire State

Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereafter referred to as the “Erosion Control Manual”).

35. That NYS Stormwater Design Manual prohibits infiltration practices, including rain gardens, in fill soils, except the top quarter of an infiltration trench or dry well. See, NYS Stormwater Design Manual, p. 214.

36. That Petitioner submitted the Report of her engineer, Daniel R. Hershberg, P.E. of Hershberg & Hershberg to the Board which raised this exact issue. “Rain gardens are an infiltration practice. Infiltration practices are not permitted on fill sites.” A copy of the Report of Daniel R. Hershberg, P.E. submitted to the Board at its July, 2019 meeting is annexed hereto and labeled as Exhibit “D.”

37. That it is respectfully submitted that the entire Subject Property is a fill site. A soil sampling of Barton & Logudice as part of a Phase I at the property in 2013 states that “the eastern portion of the site consists predominantly of apparently undisturbed fill and soil material, with the exception of one area in the southeast corner of the property that appears to be covered with gravel/cobble fill. The northern portion of the site is largely covered by similar apparent gravel/cobble fill Historic fill was noted in several areas of the site including the western and north-central portion and was generally comprised of black or grey stained soil containing slag material. Where encountered, the depth of historical fill ranged from 0.5 feet to at least 2-feet.” A copy of the Barton & Loguidice Report dated October 8, 2013 is annexed hereto and labeled as Exhibit “E.”

38. That additionally, to address concerns about prior site contamination raised in prior Phase I and Phase II Reports, the Respondent WWAMH has stated it will cover remaining undeveloped areas of native soil with a layer of imported, clean soil. The letter of H. Thomas

Jarrett, Engineer for Respondent WWAMH, dated July 17, 2019 explicitly states that any new gardens at the site will be constructed of imported soils. A copy of the letter to the Board of H. Thomas Jarrett is annexed hereto and labeled as Exhibit "F."

39. That rain gardens appear to be the primary method of stormwater management at the Subject Property, as it has proposed to eight (8) raingardens in all as part of its stormwater design. See, Petitioner's Exhibit "F."

40. That this proposal is in direct conflict with the NYS Stormwater Design Manual and, consequently, the Glens Falls Zoning Code.

41. Based upon the foregoing, it is respectfully submitted that the Project's stormwater design, as proposed, is not designed in accordance with the required design criteria for the City of Glens Falls and the State of New York and the Board's failure to require compliance with these standards is contrary to the express language of the City Zoning Ordinance, and was otherwise arbitrary, capricious and unlawful.

FOURTH CAUSE OF ACTION
(Stay Pursuant to CPLR §7805)

42. Petitioner repeats and realleges the allegations stated and contained in Paragraphs 1 through 41 as though fully set forth herein.

43. That based upon the issues raised by the Petitioner regarding the decision by the City of Glens Falls to grant the Respondent WWAMH site plan approval for its proposed development of the Subject Property, it is respectfully requested that the Respondent WWAMH be stayed from further approvals, permits, or development of this parcel until such time as this Article 78 is decided.

WHEREFORE, Petitioner accordingly demands judgment Order and Judgment Pursuant to CPLR Article 78 vacating and reversing the granting of site plan approval to Respondent Warren-Washington Association for Mental Health, Inc. by the City of Glens Falls/City of Glens Falls Planning Board on the basis that the approval was contrary to the intent and clear meaning of the City Zoning Code, violated the express language of the City Zoning Code, and was otherwise arbitrary, capricious and unlawful and further demands judgment staying any further approvals, permits or development relating to the Subject Property while this Article 78 is pending; and for such other and further relief as the Court shall deem just and proper.

Dated: October 2, 2019
Lake George, New York

STAFFORD, CARR & McNALLY, P.C.



By: Nathan Hall, Esq.
175 Ottawa Street
Lake George, New York 12845
Phone: (518) 668-5412

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF WARREN)

ELIZABETH MILLER, being sworn says: I am the Member of MMSI Properties, LLC, the petitioner herein; I have read the annexed Verified Petition, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following: discussions with counsel and review of records relating to this project.


Elizabeth Miller

Sworn to before me this
2nd day of October, 2019


Notary Public

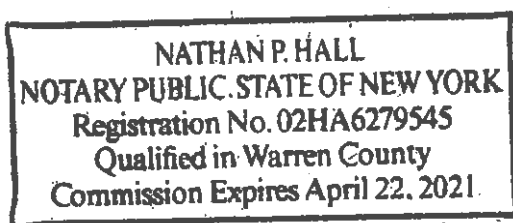


EXHIBIT “A”

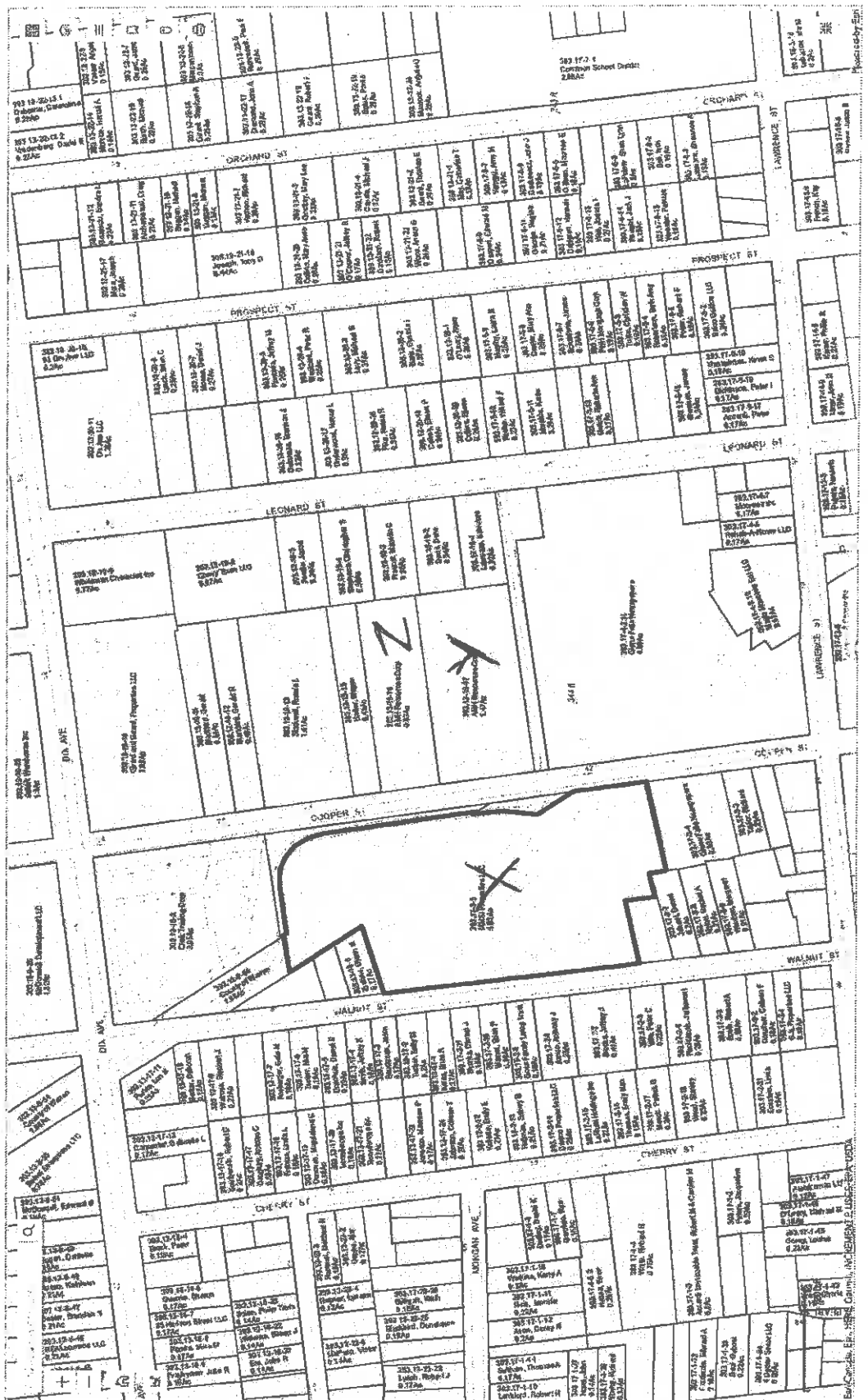


EXHIBIT “B”



Glens Falls Hospital

(<https://www.glensfallshospital.org/>)

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/ About Us (<https://www.glensfallshospital.org/about/about-us>)

/ What's New at GFH (<https://www.glensfallshospital.org/about/about-us/press-releases>)

/ Glens Falls Hospital, Washington and Warren Counties Working to Increase Access to

Outpatient Behavioral Health and Substance Use Services

Glens Falls Hospital, Washington and Warren Counties Working to Increase Access to Outpatient Behavioral Health and Substance Use Services

08/30/19

GLENS FALLS, NY — Glens Falls Hospital shared today that they are working with county government to engage other behavioral health providers in a conversation about the future of care in the region.

For nearly 50 years, Glens Falls Hospital has been the contracted provider of outpatient behavioral health services in Warren and Washington counties. In that time the community and the needs of the patients Glens Falls Hospital serves has changed tremendously.

The need that exists today for outpatient behavioral health services is far greater than what Glens Falls Hospital can meet on their own. The hospital is committed to being part of the long-term solution to the growing need for behavioral health services and engaging with the Office of Community Services for Warren and Washington Counties in a thoughtful and deliberate partnership exploration process to increase access to outpatient behavioral health and substance use services in Warren and Washington counties.

"Glens Falls Hospital has been a committed partner to the county for nearly 50 years, and we appreciate their willingness to help find the best solution to increase access to much needed behavioral health services in our community," said Robert York, Director of Community Services for Warren and Washington Counties.

The hospital is helping the county to identify specialized organizations that have advanced skills and expertise and who share their commitment to those in need as a mission-centered, not-for-profit organization. Through the partnership exploration process, the county is looking for a provider to manage existing addiction services as well as child, adolescent and adult behavioral health services, with specific focus on those with serious and persistent mental illness (SPMI).

"In collaboration with the counties, we are exploring a variety of types of partnerships with local and regional providers, and our shared goal is to expand access to much needed behavioral health services in our community. We are taking the time to do this right, and we are engaging in conversations with a variety of non-profit organizations who share our same commitment to caring for this vulnerable population," said Dianne Shugrue, CEO of Glens Falls Hospital.

As Glens Falls Hospital works with the counties to identify potential partners, their outpatient behavioral health operations will continue and patients will continue to receive the same high-quality, compassionate care as they always have.

Shugrue emphasized that Glens Falls Hospital is committed to working with the counties and potential partners in the best interest of the patients they serve and will provide updates to

employees, patients and the community as appropriate.

####

About Glens Falls Hospital:

Glens Falls Hospital (GFH) maintains a service area that spans 6,000 square miles across 5 diverse counties. Founded in 1897, GFH today operates an advanced health care delivery system featuring more than 20 regional facilities. A vast array of specialized medical and surgical services are provided in addition to coronary care, behavioral health care, rehabilitation and wellness and others. The main hospital campus is home to the C.R. Wood Cancer Center, the Joyce Stock Snuggery birthing center, the Breast Center and a chronic wound healing center. GFH is a not-for-profit organization and the largest employer in New York's Adirondack region, with over 2,500 employees and a medical staff of over 575 providers. For more information visit [www.GlensFallsHospital.org](http://www.glensfallshospital.org) (<http://www.glensfallshospital.org/>).

About Warren and Washington Counties:

The Office of Community Services for Warren and Washington Counties is a shared county administrative office with responsibility under NYS Mental Hygiene Law for planning, oversight and coordination of mental health, substance use and intellectual/developmental disability services and supports for individuals in Warren and Washington Counties.

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What's New at GFH

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30 - Glens Falls Hospital, Washington and Warren Counties Working to Increase Access to Outpatient Behavioral Health and Substance Use Services (<https://www.glensfallshospital.org/about/about-us/press-releases/glens-falls-hospital-washington-and-warren-counties-working-increase-access-outpatient-behavioral-health-and-substance-use-servi>)

July

February

2018

2017

EXHIBIT “C”

timesunion

<https://www.timesunion.com/news/article/Behavioral-health-providers-look-north-as-Glens-14420353.php>

Behavioral health providers look north as Glens Falls Hospital announces service reduction

Hospital says it can no longer keep up with demand for mental health, addiction services



IMAGE 1 OF 4

Buy Photo

Glens Falls Hospital on Wednesday Dec. 14, 2016 in Glens Falls, N.Y. (Michael P. Farrell/Times Union)

GLENS FALLS — An Albany area human services agency says it wants to open a mental health clinic in Glens Falls capable of serving 1,000 people, and it wants to do it fast.

Northern Rivers Family of Services CEO William Gettman said Thursday that the agency hopes to obtain local and state

approvals to open the clinic by January 2020 — an accelerated timeline that seeks to accommodate unmet need and ease a much larger concern regarding the future of behavioral health services in the region.

That concern is rooted in last month's announcement that Glens Falls Hospital, the largest provider of behavioral health services in the Warren and Washington county region, plans to discontinue its outpatient mental health and addiction services. Nearly 2,000 people currently receive these services.



"We've got to get this clinic standing up because there are clients who need this service," Gettman said.

Northern Rivers is currently in lease negotiations for a 6,000-square-foot space less than a mile from the hospital. It would serve roughly 500 adults and 500 children, and provide a range of mental health services including therapy, social work, medication management, group sessions, assessments and diagnoses.

"It's on a bus line, it's confidential, it's modern, it's safe and secure," Gettman said. "It's a really good location."

The nonprofit already has a presence in the region through its school-based mental health clinics, and a handful of other programs. In the Capital Region, it operates four outpatient clinics in addition to its school-based clinics. All told, it serves some 16,000 children, adults and families across 36 counties.

Transitioning providers

Glens Falls Hospital CEO Dianne Shugrue said the hospital intends to continue services until a new provider, or several providers, are approved to take them over.

Those providers must be approved by the Office of Community Services for Warren and Washington Counties and, depending on the service line, the state Office of Mental Health or the state Office of Alcoholism and Substance Abuse Services.

Robert York, director of the Office of Community Services for the counties, said Friday said he estimate the transition could take four to six months and he has been approached by several agencies interested in taking over the hospital's services.

He confirmed that Northern Rivers has approached the hospital and office about its plans, but said the clinic Northern Rivers is interested in opening would ideally serve new patients. Unmet need is so high, he explained, that ideally the counties will be able to find one provider (or providers) to take over the hospital's existing services, and another to take on the unmet need.

"We want to make it as smooth a transition as possible so that there's no disruption to service," he said. "At the same time, we want to expand services."

York declined to say what other agencies his office has spoken to, but confirmed that they are from the region.

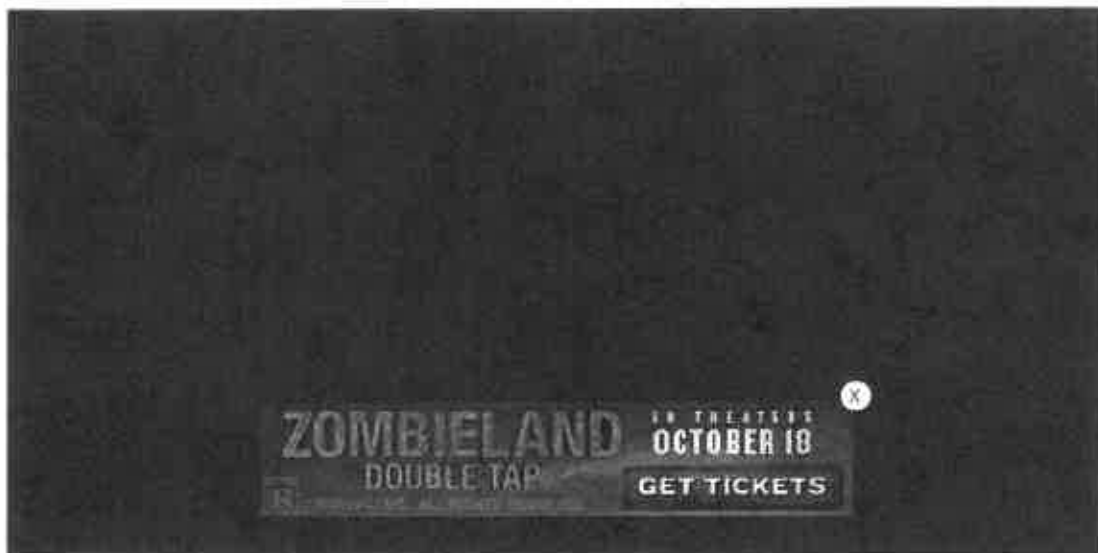
He said his office is looking for providers with a proven track record in addiction and/or mental health services. The Community Services Board, the office's governing body, will meet later this month and may discuss potential replacements then, he said.

Rising demand

Demand for behavioral health services is rising everywhere.

The opioid epidemic continues to fuel record overdose deaths nationwide, and rising suicide rates have helped to bring American life expectancy down for the third consecutive year in a row — the longest sustained decline since World War I and the Spanish Flu.

Guyger sentencing begins after guilty verdict



As a result, communities are under pressure to expand access to both addiction and mental health services. This has proven difficult in rural areas, where providers are few and far between and travel to services can be burdensome. Some providers are getting around this by expanding into telepractice, where therapy and other medical services are provided virtually.

"Our community has been struggling with access to clinic services for some time," York said. "Even before this occurred we had discussed whether there was a way we could expand services."

Glens Falls Hospital has been providing outpatient behavioral health services in the region for "probably 50 years," Shugrue said.

But between growing demand and ongoing difficulties in finding and keeping behavioral health providers, she said the hospital is no longer able to serve the

community in the way it needs.

"We are long term not able to even continue at the level we are providing," she said.

"It is our belief...that organizations that specialize in behavioral health services have better ability to recruit and retain staff, and to expand services," she added.

More Information

A 'tough' business model

But the hospital's decision to discontinue services has taken those who work in the field by surprise, given its long history in the field and its own admission that need is high. Finding other providers to take on those services when demand is high everywhere may be difficult, Gettman said.

"It's going to be a challenge because running a clinic is a very tough business model," he said. "It's driven by how many insurance companies pay you, what they pay you, what your rate of attendance is — because if you have no-shows, your employees are still getting paid but you're not earning revenue. So I don't think people are knocking down the door to get into the clinic business."

Gettman said Northern Rivers balances these difficulties with a fee-for-service pay structure at its mental health clinics.

"We pay you when you provide services and treat somebody," he said. "When you're not doing that we pay you a lower, what we call administrative, rate. So you're still getting paid, but there's an incentive for you to actually see and treat clients."

Shugrue declined to say how much it cost the hospital to run its outpatient behavioral health services, or how much it will save by dropping the service line.

"This isn't about cost," she said. "This is about our ability to provide behavioral health services."

According to the Post-Star, the hospital **lost \$38 million in 2017** after transitioning to a new billing system that led to service claims not being submitted until months after procedures had been completed. In many cases, insurers will refuse to pay claims that are submitted after a certain period of time has passed.

In response, the hospital reduced operating costs and laid off employees, including a **significant number of primary care providers**, the newspaper reported.

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H E A R S T

https://poststar.com/opinion/editorial/editorial-hoping-for-growth-in-mental-health-services/article_e68037f3-b54d-59cf-8012-c3febf2eed.html

Editorial

EDITORIAL: Hoping for growth in mental health services

Post-Star editorial board Sep 27, 2019

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With Glens Falls Hospital planning to close its outpatient mental health services, plans are being made for new providers to take over.

Post-Star file photo

A meeting with local leaders in the mental health field has given us hope that Glens Falls Hospital's decision to discontinue its outpatient mental health services won't lead to a drop in the availability or quality of these services.

It's even possible the changes that are coming will lead to a needed increase in these services, and make them more accessible. That would be excellent news for the community.

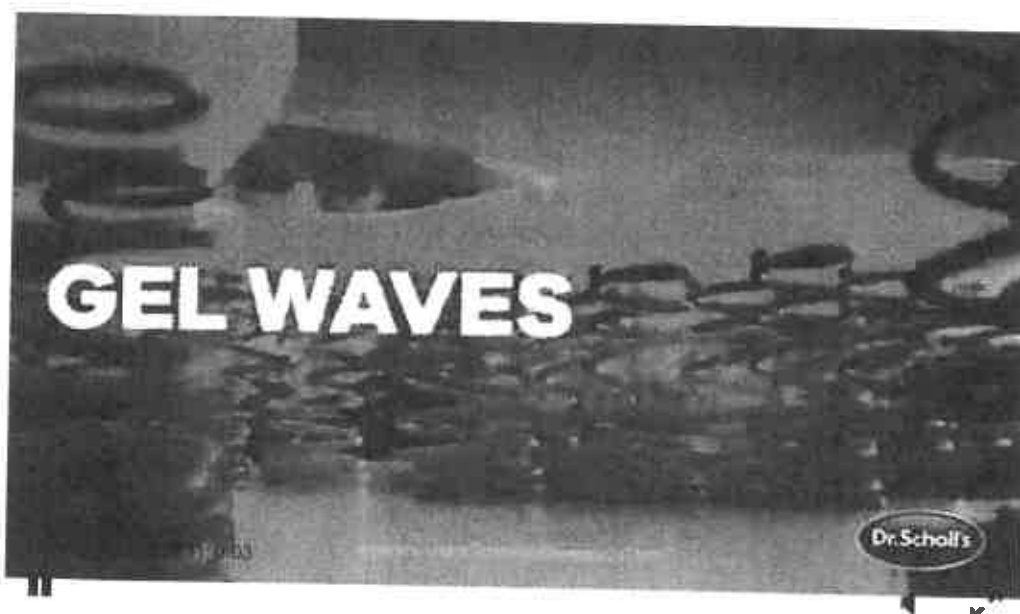
Rob York, director of Community Services of Warren and Washington Counties, told us that other providers are interested in taking over programs the hospital has been running, and that transition should take place within the next six months.

York came in with Carrie Wright, program analyst with Community Services, and Dan Durkee, the emergency preparedness coordinator for Warren County Department of Public Health, to talk about the community's mental health care needs.

They emphasized the importance of these services, saying this transition could be an opportunity to recruit providers who will fill some of the unmet need locally. "Open access" is the treatment philosophy they are looking for — they want mental health care patients to have "rapid access to treatment," in the same way that people with other pressing medical needs can find help quickly at an urgent care center.

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The Post-Star has previously reported that Northern Rivers, which runs several mental health clinics in the Albany area, has taken steps toward opening a clinic in the Glens Falls region that could serve 1,000 patients. York said that clinic would be “added capacity,” over and above the hospital’s services, which will be taken over by other providers.

Now, the hospital runs an adult outpatient clinic; a children’s counseling center, the Center for Children and Families; and two substance abuse recovery centers. These are critical services, and hundreds of people rely on them. The clinic alone has about 1,200 patients, York said.

The ideal scenario is that the staff now running these clinics stays in place while new organizations take over for the hospital, and no one ends up losing services they need. It will be even better if, as things shake out, the area ends up with more providers, and patients find they have easier, quicker access to care.

Mental health care is still too often seen as a luxury, when it’s just as necessary as other health care. Mental illnesses respond to treatment. Counseling can make enormous differences in quality of life and save relationships. Recovery programs save lives.

We’re lucky in this region to have professionals like York, Wright and Durkee stepping into the breach and working to ensure these critical programs won’t be curtailed, even if the hospital is no longer running them. We will consider ourselves even luckier if the

current upheaval in the local mental health field leads to something the area badly needs — an expansion of services.

Local editorials represent the opinion of the Post-Star editorial board, which consists of Editor Ken Tingley, Projects Editor Will Doolittle, Publisher/Controller/Operations Director Brian Corcoran and citizen representatives Connie Bosse, Barb Sealy and Alan Whitcomb.



Retired doctor urges letter-writing campaign to save Glens Falls Hospital

OUR VIEW

Glens Falls Hospital's plan to close its outpatient mental health services could be an opportunity to re-evaluate the community's needs and expand those services.

EXHIBIT “D”



HERSHBERG
&
HERSHBERG

Consulting
Engineers

Land Surveyors

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Francis G. McCloskey, L.S.

2
BY E-MAIL to Nathan.Hall@scmattorneys.com

July 1, 2019

Nathan Hall, Esq.
Stafford, Carr & McNally
175 Ottawa Street
Lake George, New York 12845

**Re: 50 Cooper Street
City of Glens Falls, NY
Document Review**

Dear Mr. Hall:

Based on your request, I have reviewed the following documents presented to the City of Glens Falls:

1. Set of Plans complete in 14 sheets entitled *Warren Washington Association for Mental Health, Cooper Street Apartments, 50 Cooper Street, City of Glens Falls, New York* by Jarrett Engineers, PLLC last revised 05-14-19.
2. Letter dated October 8, 2013 with regard to *Surface Soil Sampling and Analysis, Former Mullen Iron Works Site, 47-50 Cooper Street, City of Glens Falls, New York* from Barton & LoGuidice
3. Three (3) Executive Summaries (excerpts of some) of *Environmental Site Assessments Former Mullen Iron Works Site* prepared by Barton & LoGuidice. For identification these are:
 - a. Phase 1 ESA based upon investigation dated June 24, 2011, Executive Summary Pages E-1 through E-5.
 - b. Phase 1 ESA based upon investigation dated August 7, 2013, Executive Summary Pages E-1 through E-4.
 - c. Phase 2 ESA undated, Pages 1 & 30
4. Letter dated October 28, 2015 with regard to *Phase 2 Site Investigation, Former Mullen Iron Works Site, 47-50 Cooper Street, Glens Falls, NY* from Barton & LoGuidice
5. Letter dated June 7, 2018 with regard to *Phase 2 Site Investigation, Former Mullen Iron Works Site, 47 and 50 Cooper Street, Glens Falls, New York* from Sterling Environmental Engineering, P.C.
6. Cover Sheet for June 17, 2019 transmittal from Harris A. Sanders, Architects, P.C.
7. A Building Permit Application dated 6/17/19.

8. A Short Environmental Assessment Form, Parts 1 (completed), 2 (blank) & 3 (blank), complete in 6 sheets
9. A list of Exterior Material selections dated June 17, 2019 from Harris A. Sanders, Architects, P.C.
10. Building Elevations, Sheet A3 from Harris A. Sanders, Architects, P.C.
11. Building Floor Plans, Sheet A1 from Harris A. Sanders, Architects, P.C.
12. Grading & Stormwater Plan, Sheet SW1, by Jarrett Engineers, PLLC last revised 06-18-19.
13. Set of Plans complete in 14 sheets entitled *Warren Washington Association for Mental Health, Cooper Street Apartments, 50 Cooper Street, City of Glens Falls, New York* by Jarrett Engineers, PLLC last revised 06-18-19.
14. Letter dated June 18, 2019 with regard to *WWAMH "Cooper Street Apartments", 47-50 Cooper Street, Glens Falls, NY* from Jarrett Engineers, PLLC
15. Letter dated June 18, 2019 with regard to *AMH Resources, Inc., 47-50 Cooper Street Tax Map Parcels: 303.13-19-16&17, Response to Appeal Presented by MMSI Properties, LLC (Elizabeth Miller)* from Bartlett, Pontiff, Stewart & Rhodes, P.C.
16. Letter dated June 19, 2019 with regard to *AMH Resources, Inc., 47-50 Cooper Street, Tax Map Parcels: 303.13-19-16&17* from Bartlett, Pontiff, Stewart & Rhodes, P.C.
17. Erosion & Sediment Control, Portion of the NYSDEC, "Stormwater Pollution Prevention Plan" (SWPPP), For the Development of a new Warren-Washington Association for Mental Health Residential Apartments, Located at 47-50 Cooper Street, City of Glens Falls, New York, April 2019

Based upon my review, I have identified significant missing or incorrectly stated information making the comprehensive review required by the Glens Falls Planning Board and the Glens Falls Zoning Board of Appeals impossible to complete. I have identified areas of concern and referred to documents governing activities where appropriate. I have also attached Exhibits where required

Wetland

The SEAF (Item 8 above) says:

National Wetland Inventory identified potential wetlands at the rear of the site. Our subsequent review on 5/14/2019 indicated that a small area of wetlands exists at the extreme northeast corner of the site, and another area at the southeast corner of the site may be starting to exhibit wetland conditions. Both areas were likely not wetlands during the industrial period, however, subsequent excavations especially during site remediation efforts which included the removal of shallow soils may be causing the development of wetland conditions. Further assessment later in the growing season would be required to make a better determination."

In the June 18, 2019 letter (Item 14 above) under the heading 2. Wetland the following statement is made:

Our initial observations of the site were during the past winter and although no vegetation was available to confirm wetland conditions, we observed standing water (and ice) along portions of the eastern section of the site, and especially in the northeast corner. That coupled with the SEQR EAF automated response from the NYSDEC documenting potential wetlands identified by the "National Wetlands Inventory" led us to revisit the site following frost leaving the ground. During the subsequent visit, our wetlands biologist observed conditions along the eastern section of the site that led her to believe that there are US Army Corps of Engineers (USACE) jurisdictional wetlands present in the northeast corner of the site. She also documented that due to the recent excavation of the site, wetland conditions may form in the southeast corner of the site over time. As a result of these observations, we modified the site design to move the proposed landscaped berm (buffer) away from the wetland observed in the northeast corner of the site (see attached plan.

Sheet 3 of 14 identified as "Permitting Plan" in set of drawings identified in this report as Item 13 shows a small wetland area as "USACOE Jurisdictional Wetland". This is significantly smaller than the area shown on the National Wetland Inventory Mapper. See Exhibit A. In order to determine whether the indicated wetland is accurate, the City of Glens Falls Planning Board should insist on a Jurisdictional Determination by USACOE.

Lack of a Complete SWPPP

Glens Falls is a MS4 community. As a MS4 community it must prepare an MS4 Annual Report. On the report filed March 9, 2019 page MCM 4 page 3 of 3 includes the following:

A. Briefly summarize the Measurable Goal identified in the SWMPP in this reporting period.

Review SWPPP's for land use, incorporate stormwater reduction into new developments, train City staff in green infrastructure and stormwater reduction, allow only knowledgeable contractors to work in the city, SMPPP compliance activities recorded, approve construction BMP's, resolve complaints, keep City and construction within the City in compliance with DEC regulations.

B. Briefly summarize the observations that indicated the overall effectiveness of this Measurable Goal.

SWPPP's are reviewed, stormwater reduction and green infrastructure incorporated in new developments, regularly inspect construction sites to ensure DEC compliance, address complaints immediately.

The *Erosion & Sediment Control Portion of the NYSDEC "Stormwater Pollution Prevention Plan" (SWPPP)*- Item 17 above lacks information suitable to perform a "Review".

The only pages connected to the subject site are pages 1-5. The balance of the Appendices are standard materials some of which belong in a complete SWPPP. The text of SPDES GP30-15-002, the NOI (completed), the NOT and the proper Construction & Maintenance Inspection Checklists and Construction Stormwater Inspection Reports.

The Construction & Maintenance Inspection Checklists and Construction Stormwater Inspection Reports incorporated were for Stormwater/Wetland Ponds, Infiltration Trench, Infiltration Basin, Sand/organic Filter, Bioretention and Open Channel. These checklists belong in the *Post-construction stormwater management practice component*. None of these methods are proposed. The plans show rain gardens.

Post-construction stormwater management practice component SWPPP

In order to evaluate the stormwater management as required by the MS4 coordinator, the following would be required none of which is ascertainable from the documents reviewed:

A Stormwater Modeling and Analysis Report that includes:

- Tributary Map(s) showing pre-development conditions, including watershed/subcatchments boundaries, flow paths/routing, and design points.
- Tributary Map(s) showing post-development conditions, including watershed/subcatchments boundaries, flow paths/routing, design points and post-construction stormwater management practices.
- Results of stormwater modeling (i.e. hydrology and hydraulic analysis) for the required storm events. Include supporting calculations (model runs), methodology, and a summary table that compares pre and post-development runoff rates and volumes for the different storm events.
- Summary table, with supporting calculations, which demonstrates that each post-construction stormwater management practice has been designed in conformance with the *sizing criteria* included in the Design Manual.
- Identification of any *sizing criteria* that is not required based on the requirements included in Part I.C. of GP 30-15-002.

Soil testing results and locations (test pits, borings) and infiltration tests based upon the design proposed. These should measure the infiltration at the level of the bottom of the rain garden as detailed Landscape Details – Sheet D3 in latest Plan Set (See Item 13 above). The base soil has been identified in the Soil Survey (See Appendix 3) as Oakville loamy fine sand, a Hydrologic Class A soil. This must be verified by infiltration tests. Also the depth to groundwater should be determined.

Without these items it is impossible to determine what storage is accommodated in the rain gardens, elevation of stormwater for various storms. Also, no documentation is provided that the RRV Overbank Flow Criteria or Extreme Flood Criteria is met for the site. The Green Infrastructure Worksheets must be completed.

Because the site is identified as being in an archeologically sensitive area (See SEAF – Item 8 above) a letter of No Effect or No Adverse Effect should be required from NY State Historic Preservation Office (SHPO).

Selected Treatment System – Rain Gardens

The *Grading & Stormwater Plan Sheet SW3* and *Stormwater Details Sheet D1* in latest Plan Set (See Item 13 above) shows 7 rain gardens but the details only show 3 rain gardens. The plan does show contours but the details do not relate to actual ground or water levels. The depicted water level is not tied to a storm of a certain frequency.

Rain Gardens are an infiltration practice. Infiltration practices are not permitted on fill sites. The October 7, 2013 letter (See Item 13 above) notes that the *"depth of historical fill varied from 0.5 feet to at least 2 feet"*. The October 28, 2015 letter (See Item 4 above) notes that *"the source of the apparent fill material used during site restoration"* would imply that additional fill was imported between 2013 and 2015.

The details on Sheet D1 in latest Plan Set (See Item 13 above) show that the clearance from the bottom of the raingarden of 2 feet from groundwater. Although a number of borings and test pits were done on the site, none determined the stabilized groundwater level. The October 28, 2015 letter (See Item 4 above) includes in its recommendation that *"(A)dditional should at least include the drilling of soil borings and installation of groundwater monitoring levels"*.

Finally, if the site retains the levels of Semi-Volatile Organic Compounds and Metals showed exceed CP-51 Soil Cleanup Guidance levels. The site without full mitigation may qualify as a "Hotspots" which may not be used for infiltration practices. In addition, the Letter dated June 7, 2018 (See Item 5 above) recommends that "areas designated for vegetable gardens (if any), existing soil that may potentially be impacted should be removed to a depth of approximately two (2) to three (3) feet and replaced with clean soil from an offsite source.....". The resident garden only shows 12" of loamy soil to be placed.

Summary

Based upon the limited review I have made of documents, it is my opinion that no approvals should be granted until a Post-construction stormwater management practice component SWPPP has been submitted and reviewed by the MS4 coordinator or staff. The issues raised herein should be addressed to properly comply with SPDES GP# 0-15-002.

I enclose a copy of my Curriculum Vitae indicating my experience with stormwater design. If you have any questions, please contact me at your convenience.

Sincerely Yours,

HERSHBERG & HERSHBERG

CONSULTING ENGINEERS & LAND SURVEYORS



Daniel R. Hershberg, P.E. & L.S.

Attachments: Exhibit A through C

Enclosure: DRH CV

DRH/dan/50CooperStreetGF Review.doc

EXHIBIT A

NATIONAL WETLAND INVENTORY MAP

6/30/2019

Wetlands Mapper



USFWS

(/Index.html) NWI Mobile Website (/wetlands/Index.html)

NWI Website & Documents

Wetlands Mapper

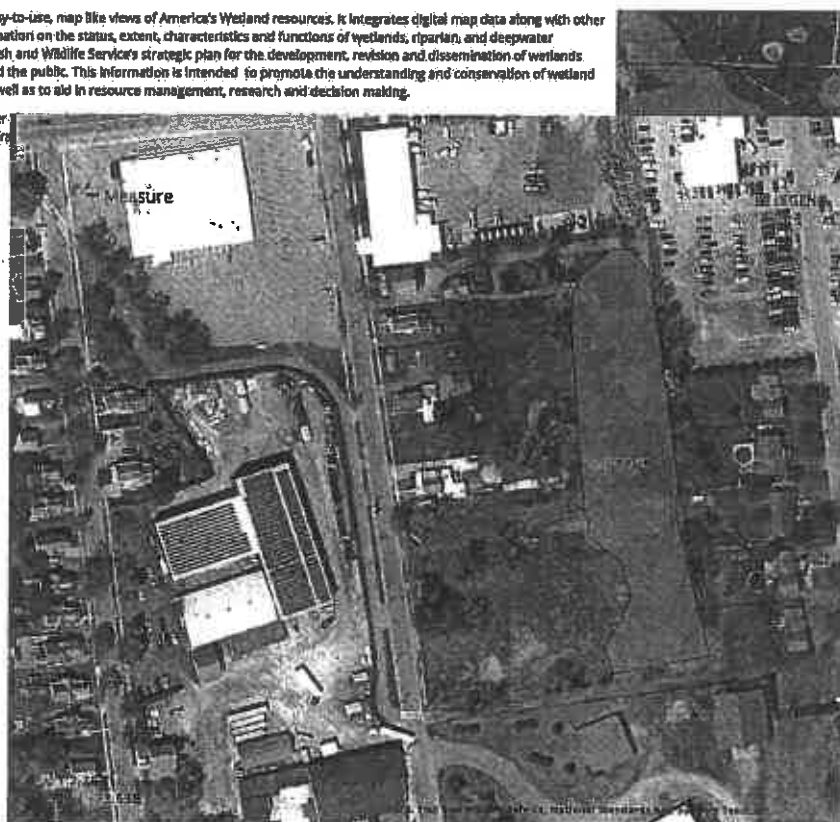
The Wetlands mapper is designed to deliver easy-to-use, map like views of America's Wetland resources. It integrates digital map data along with other resource information to produce current information on the status, extent, characteristics and functions of wetlands, riparian, and deepwater habitats. The Wetland Mapper fulfills the U.S. Fish and Wildlife Service's strategic plan for the development, revision and dissemination of wetlands data and information to resource managers and the public. This information is intended to promote the understanding and conservation of wetland resources through discovery and education as well as to aid in resource management, research and decision making.

The wetlands displayed on the Wetlands Mapper are the limits of proprietary jurisdiction of any Federal government agencies.

BASEMAPS >

MAP LAYERS >

- ☒ Wetlands 1 0
- ☐ Riparian 1 0
- ☐ Riparian Mapping Areas 1 0
- ☒ Data Source 1 0
 - ☐ Source Type
 - ☐ Image Scale
 - ☐ Image Year
- ☐ Areas of Interest 0
- ☐ FWS Managed Lands 1 0
- ☐ Historic Wetland Data 1 0



APPENDIX B

**EXCERPT FROM GP #0-15-002
RELATING TO
CONTENTS OF A STORM WATER
POLLUTION PROTECTION PLAN**

Part III. STORMWATER POLLUTION PREVENTION PLAN (SWPPP)

A. General SWPPP Requirements

1. A SWPPP shall be prepared and implemented by the *owner or operator* of each *construction activity* covered by this permit. The SWPPP must document the selection, design, installation, implementation and maintenance of the control measures and practices that will be used to meet the effluent limitations in Part I.B. of this permit and where applicable, the post-construction stormwater management practice requirements in Part C. of this permit. The SWPPP shall be prepared prior to the submittal of the NOI. The NOI shall be submitted to the Department prior to the *commencement of construction activity*. A copy of the completed, final NOI shall be included in the SWPPP.
2. The SWPPP shall describe the erosion and sediment control practices and where required, post-construction stormwater management practices that will be used and/or constructed to reduce the *pollutants* in stormwater *discharges* and to assure compliance with the terms and conditions of this permit. In addition, the SWPPP shall identify potential sources of pollution which may reasonably be expected to affect the quality of stormwater *discharges*.
3. All SWPPPs that require the post-construction stormwater management practice component shall be prepared by a *qualified professional* that is knowledgeable in the principles and practices of stormwater management and treatment.
4. The *owner or operator* must keep the SWPPP current so that it at all times accurately documents the erosion and sediment controls practices that are being used or will be used during construction, and all post-construction stormwater management practices that will be constructed on the site. At a minimum, the *owner or operator* shall amend the SWPPP:
 - a. whenever the current provisions prove to be ineffective in minimizing *pollutants* in stormwater *discharges* from the site;
 - b. whenever there is a change in design, construction, or operation at the construction site that has or could have an effect on the *discharge of pollutants*; and
 - c. to address issues or deficiencies identified during an inspection by the *qualified inspector*, the Department or other regulatory authority.

5 .The Department may notify the *owner or operator* at any time that the SWPPP does not meet one or more of the minimum requirements of this permit. The notification shall be in writing and identify the provisions of the SWPPP that require modification. Within fourteen (14) calendar days of such notification, or as otherwise indicated by the Department, the *owner or operator* shall make the required changes to the SWPPP and submit written notification to the Department that the changes have been made. If the *owner or operator* does not respond to the Department's comments in the specified time frame, the Department may suspend the *owner's or operator's* coverage under this permit or require the *owner or operator* to obtain coverage under an individual SPDES permit in accordance with Part II.C.4. of this permit.

6. Prior to the *commencement of construction activity*, the *owner or operator* must identify the contractor(s) and subcontractor(s) that will be responsible for installing, constructing, repairing, replacing, inspecting and maintaining the erosion and sediment control practices included in the SWPPP; and the contractor(s) and subcontractor(s) that will be responsible for constructing the post-construction stormwater management practices included in the SWPPP. The *owner or operator* shall have each of the contractors and subcontractors identify at least one person from their company that will be responsible for implementation of the SWPPP. This person shall be known as the *trained contractor*. The *owner or operator* shall ensure that at least one *trained contractor* is on site on a daily basis when soil disturbance activities are being performed.

The *owner or operator* shall have each of the contractors and subcontractors identified above sign a copy of the following certification statement below before they commence any *construction activity*.

"I hereby certify under penalty of law that I understand and agree to comply with the terms and conditions of the SWPPP and agree to implement any corrective actions identified by the *qualified inspector* during a site inspection. I also understand that the *owner or operator* must comply with the terms and conditions of the most current version of the New York State Pollutant Discharge Elimination System ("SPDES") general permit for stormwater *discharges from construction activities* and that it is unlawful for any person to cause or contribute to a violation of *water quality standards*. Furthermore, I am aware that there are significant penalties for submitting false information, that I do not believe to be true, including the possibility of fine and imprisonment for knowing violations"

In addition to providing the certification statement above, the certification page must also identify the specific elements of the SWPPP that each contractor and subcontractor will be responsible for and include the name and title of the person providing the signature; the name and title of the *trained contractor* responsible for SWPPP implementation; the name, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification statement is signed. The *owner or operator* shall attach the

certification statement(s) to the copy of the SWPPP that is maintained at the construction site. If new or additional contractors are hired to implement measures identified in the SWPPP after construction has commenced, they must also sign the certification statement and provide the information listed above.

7. For projects where the Department requests a copy of the SWPPP or inspection reports, the *owner or operator* shall submit the documents in both electronic (PDF only) and paper format within five (5) business days, unless otherwise notified by the Department.

B. Required SWPPP Contents

1. Erosion and sediment control component - All SWPPPs prepared pursuant to this permit shall include erosion and sediment control practices designed in conformance with the technical standard, New York State Standards and Specifications for Erosion and Sediment Control, dated August 2005. Where erosion and sediment control practices are not designed in conformance with the design criteria included in the technical standard, the *owner or operator* must demonstrate *equivalence* to the technical standard. At a minimum, the erosion and sediment control component of the SWPPP shall include the following:
 - a. Background information about the scope of the project, including the location, type and size of project;
 - b. A site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map shall show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); floodplain/floodway boundaries; wetlands and drainage patterns that could be affected by the *construction activity*; existing and final contours ; locations of different soil types with boundaries; material, waste, borrow or equipment storage areas located on adjacent properties; and location(s) of the stormwater *discharge(s)*;
 - c. A description of the soil(s) present at the site, including an identification of the Hydrologic Soil Group (HSG);
 - d. A construction phasing plan and sequence of operations describing the intended order of *construction activities*, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance;
 - e. A description of the minimum erosion and sediment control practices to be installed or implemented for each *construction activity* that will result in soil disturbance. Include a schedule that identifies the timing

of initial placement or implementation of each erosion and sediment control practice and the minimum time frames that each practice should remain in place or be implemented;

- f. A temporary and permanent soil stabilization plan that meets the requirements of this general permit and the technical standard, New York State Standards and Specifications for Erosion and Sediment Control, dated August 2005, for each stage of the project, including initial land clearing and grubbing to project completion and achievement of *final stabilization*;
 - g. A site map/construction drawing(s) showing the specific location(s), size(s), and length(s) of each erosion and sediment control practice;
 - h. The dimensions, material specifications, installation details, and operation and maintenance requirements for all erosion and sediment control practices. Include the location and sizing of any temporary sediment basins and structural practices that will be used to divert flows from exposed soils;
 - i. A maintenance inspection schedule for the contractor(s) identified in Part III.A.6. of this permit, to ensure continuous and effective operation of the erosion and sediment control practices. The maintenance inspection schedule shall be in accordance with the requirements in the technical standard, New York State Standards and Specifications for Erosion and Sediment Control, dated August 2005;
 - j. A description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a *pollutant* source in the stormwater *discharges*;
 - k. A description and location of any stormwater *discharges* associated with industrial activity other than construction at the site, including, but not limited to, stormwater *discharges* from asphalt plants and concrete plants located on the construction site; and
 - l. Identification of any elements of the design that are not in conformance with the design criteria in the technical standard, New York State Standards and Specifications for Erosion and Sediment Control, dated August 2005. Include the reason for the deviation or alternative design and provide information which demonstrates that the deviation or alternative design is *equivalent* to the technical standard.
2. Post-construction stormwater management practice component – The *owner* or *operator* of any construction project identified in Table 2 of Appendix B as needing

post-construction stormwater management practices shall prepare a SWPPP that includes practices designed in conformance with the applicable *sizing criteria* in Part I.C.2.a., c. or d. of this permit and the *performance criteria* in the technical standard, New York State Stormwater Management Design Manual dated January 2015

Where post-construction stormwater management practices are not designed in conformance with the *performance criteria* in the technical standard, the *owner or operator* must include in the SWPPP the reason(s) for the deviation or alternative design and provide information which demonstrates that the deviation or alternative design is *equivalent* to the technical standard.

The post-construction stormwater management practice component of the SWPPP shall include the following:

- a. Identification of all post-construction stormwater management practices to be constructed as part of the project. Include the dimensions, material specifications and installation details for each post-construction stormwater management practice;
- b. A site map/construction drawing(s) showing the specific location and size of each post-construction stormwater management practice;
- c. A Stormwater Modeling and Analysis Report that includes:
 - (i) Map(s) showing pre-development conditions, including watershed/subcatchments boundaries, flow paths/routing, and design points;
 - (ii) Map(s) showing post-development conditions, including watershed/subcatchments boundaries, flow paths/routing, design points and post-construction stormwater management practices;
 - (iii) Results of stormwater modeling (i.e. hydrology and hydraulic analysis) for the required storm events. Include supporting calculations (model runs), methodology, and a summary table that compares pre and post-development runoff rates and volumes for the different storm events;
 - (iv) Summary table, with supporting calculations, which demonstrates that each post-construction stormwater management practice has been designed in conformance with the *sizing criteria* included in the Design Manual;
 - (v) Identification of any *sizing criteria* that is not required

based on the requirements included in Part I.C. of this permit; and

- (vi) Identification of any elements of the design that are not in conformance with the *performance criteria* in the Design Manual. Include the reason(s) for the deviation or alternative design and provide information which demonstrates that the deviation or alternative design is *equivalent* to the Design Manual;
 - d. Soil testing results and locations (test pits, borings);
 - e. Infiltration test results, when required; and
 - f. An operations and maintenance plan that includes inspection and maintenance schedules and actions to ensure continuous and effective operation of each post-construction stormwater management practice. The plan shall identify the entity that will be responsible for the long term operation and maintenance of each practice.
3. Enhanced Phosphorus Removal Standards - All construction projects identified in Table 2 of Appendix B that are located in the watersheds identified in Appendix C shall prepare a SWPPP that includes post-construction stormwater management practices designed in conformance with the applicable *sizing criteria* in Part I.C.2. b., c. or d. of this permit and the *performance criteria*, Enhanced Phosphorus Removal Standards included in the Design Manual. At a minimum, the post-construction stormwater management practice component of the SWPPP shall include items 2.a - 2.f. above.

C.

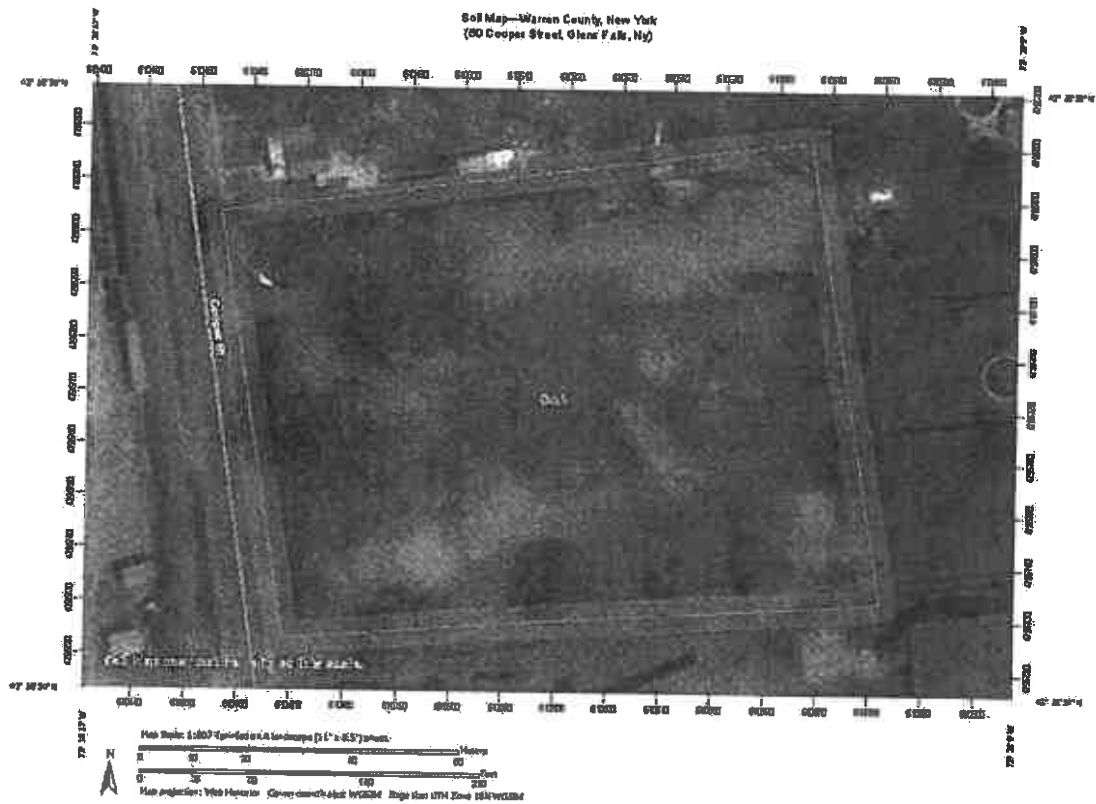
Required SWPPP Components by Project Type

Unless otherwise notified by the Department, *owners or operators of construction activities* identified in Table 1 of Appendix B are required to prepare a SWPPP that only includes erosion and sediment control practices designed in conformance with Part III.B.1 of this permit. *Owners or operators of the construction activities* identified in Table 2 of Appendix B shall prepare a SWPPP that also includes post-construction stormwater management practices designed in conformance with Part III.B.2 or 3 of this permit.

EXHIBIT C

SOIL SURVEY

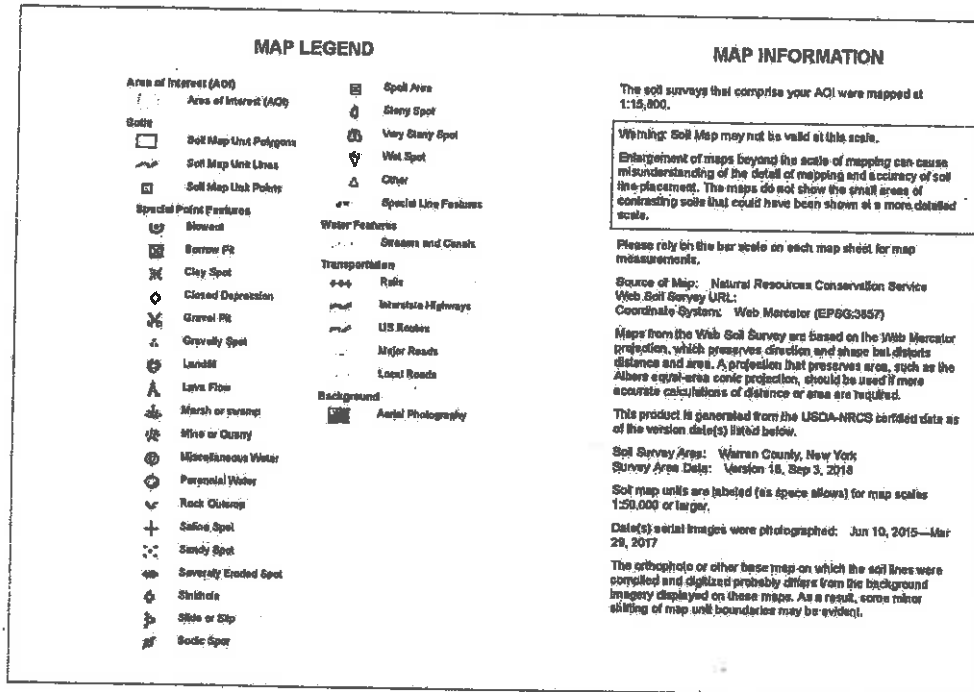
Soil Map—Warren County, New York
(50 Cooper Street, Oneida Falls, NY)



Natural Resources
Conservation Service

Web Soil Survey
National Cooperative Soil Survey

06/02/2019
Page 1 of 3



Map Unit Legend

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
OsA	Oakville loamy fine sand, 0 to 3 percent slopes	2.4	100.0%
Totals for Area of Interest		2.4	100.0%

EXHIBIT “E”



Celebrating over 50 years of service

Engineers • Environmental Scientists • Planners • Landscape Architects

October 8, 2013

Elizabeth Miller, President
Miller Mechanical Services, Inc.
51 Walnut Street
Glens Falls, New York 12801

Re: Surface Soil Sampling and Analysis
Former Mullen Iron Works Site, 47-50 Cooper Street
City of Glens Falls, New York

File: 1607.001.001

Dear Ms. Miller:

This letter presents the results of the surface soil sampling activities conducted by Barton & Loguidice, P.C. (B&L) at the former Mullen Iron Works site on August 8, 2013 as part of a modified Phase I Environmental Site Assessment (ESA). The purpose of this site assessment was to supplement the Phase I ESA by determining if historical operations at the site have detrimentally impacted the on-site surface soils to the extent that additional investigation and/or remediation activities are warranted prior to the future use and development of the property. As described in greater detail below, the sampling activities included the collection and analysis of seventeen (17) surface soil samples.

Site Location and Description

The former Mullen Iron Works site consists of a 2.5-acre parcel located on the east side of Cooper Street in the City of Glens Falls, as depicted in Figure 1. Two large historic structures and other smaller structures were recently demolished and removed from the site. The main site structure, formerly located at the southwest corner of the property, was used as a metal-working fabrication shop which consisted of a rectangular two-story building. The second building, located to the northeast of the metal fabrication shop, was used as a foundry. Throughout this report, the site is described with reference to the following three general areas based on the existing site conditions at the time of the sampling activities: the former foundry and metal fabrication area, the eastern portion, and the northern portion (Figure 2). The former foundry and metal fabrication area of the site appears to have been recently graded following the removal of soil and/or demolition debris from the former structures (Photo 1). The eastern portion of the site consists predominantly of apparently undisturbed fill and soil material, with the exception of one area in the southeast corner of the property that appears to be covered with gravel/cobble fill (Photo 2 & 3). The northern portion of the site is largely covered by similar apparent gravel/cobble fill forming an access road, and various debris piles/staging areas, including scrap metal, scrap wood, brick rubbles, and other miscellaneous debris (Photo 4). A pond exists in the northeastern corner of the site (Photo 5). A thorough account of the site description and history can be found in Modified Phase I ESA (B&L, 2013).





Elizabeth Miller, President
Miller Mechanical Services, Inc.
October 7, 2013
Page 2

Collection of Surface Soil Samples

Based on the findings of the modified Phase I ESA historical document review and an August 7 site reconnaissance, B&L selected seventeen (17) surface soil sample locations (designated as SS-01 through SS-17), which are shown on Figure 2. The surface soil samples were collected by B&L hydrogeologists on August 8, 2013 using a de-contaminated hand auger. Based on the physical characteristics noted during soil sample collection, the former foundry/metal fabrication area generally consists of an approximately 2-foot thick loose, reddish-brown sand with little silt and gravel, which is underlain by dense brown to grey clay with little silt. Historic fill was noted in several areas of the site including the western and north-central portion and was generally comprised of black or grey stained soil containing slag material. Where encountered (SS-5, SS-6, SS-7, SS-8, SS-9, and SS-12), the depth of historical fill ranged from 0.5-feet to at least 2-feet. Neither bedrock nor groundwater was encountered during the surface soil sampling event.

Surface soil samples were examined in the field for visual and/or olfactory evidence of contamination and field screened with a photoionization detector (PID) for the presence of total volatile organic compounds (VOCs). Based on the field observations, ten (10) of the surface soil samples were collected for laboratory analysis from a depth of 0 to 6 inches and seven (7) surface soil samples were collected for laboratory analysis from varying depths ranging from 2 to 4 feet. A summary of soil sample depths, PID readings, and soil sample descriptions is provided in Table 1. All holes created during the collection of the soil samples were subsequently backfilled with the original soil.

The surface soil samples collected for laboratory testing were placed in appropriate sample jars on ice and submitted to Alpha Analytical, Inc. of Westborough, Massachusetts for the analysis of VOCs by EPA Method 8260 plus methyl tert-butyl ether (MTBE), semi-volatile organic compounds (SVOCs) by EPA Method 8270 (Base/Neutrals), polychlorinated biphenyls (PCBs) by EPA Method 8082, and the Target Analyte List (TAL) of metals by EPA Method 6010B.

Soil Quality Test Results

The complete analytical sample results are found in the laboratory summary report included as Attachment B, and a data summary table is provided as Table 2, and an exceedance overview can be found in Figure 3. In both the laboratory summary report and the data summary table, the chemical concentrations of any parameters detected in the analysis are indicated. Parameters that were analyzed for but not detected are indicated as U in the summary table or ND in the laboratory summary report. In Table 1, the detected concentrations are compared to standards (limits) set by the New York State Department of Environmental Conservation (NYSDEC). The NYSDEC has multiple standards which are applied in different situations, dependent primarily on the anticipated future site use. Because of the potential intended reuse of the subject property as a commercial site, B&L compared the analytical data to the following two NYSDEC documents:

- *CP-51 Soil Cleanup Guidance* soil cleanup levels (SCLs)
- *6 NYCRR Part 375* soil cleanup objectives (SCOs) for commercial use



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Instances where a detected chemical concentration exceeds one of the applicable standards (SCLs or SCO) are highlighted in Table 2 and are shown on Figure 3 at the associated sample location. The analytical results are discussed by analysis below.

Volatile Organic Compounds

There were no VOC exceedances of the NYSDEC CP-51 SCLs or Part 375 *commercial* SCOs. The analytical results indicated various, low-level detections (below the applicable standards), including methylene chloride, acetone, and toluene, all common laboratory contaminants, and bromomethane.

Semi-Volatile Organic Compounds

The analytical data from six (6) of the surface soil samples indicated that several SVOCs were detected above the applicable CP-51 SCLs or Part 375 SCOs, including benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, and indeno(1,2,3-cd)pyrene, all polycyclic aromatic hydrocarbons (PAHs). PAHs are produced as byproducts of fuel burning and may be related to historical site use. These contaminants are also very common in the urban environment and are often associated with historical fill material. The highest PAH concentrations were reported at SS-09 and SS-10. The SS-09 sample was collected from on a mounded area of apparent foundry waste (loose, brown to black sand and slag material) along the eastern boundary of the site (Photo 6). The SS-10 sample was collected from the sediment surrounding the low-lying pond area in the northeast corner of the site. The remaining SVOCs (specifically PAHs) exceedances were observed at relatively lower concentrations at SS-07 and SS-16, located in the vicinity of the former foundry building footprint; SS-11 located near the above described pond area; and SS-05, located in the southeastern portion of the site, some distance from any known historical structures.

Metals

The analytical results indicate that metals were detected at all of the sample locations across the site; however, exceedances of the commercial SCOs are more limited and there were no reported exceedances of the CP-51 SCL. The Copper exceedances are found in the samples collected from the following locations, which were all taken from a depth of less than 1 foot: SS-05, SS-08, SS-09, SS-10, and SS-11 at depths ranging from 0 to 1-foot. Three of these sample locations are found along the property boundaries in the northeastern portion of the site, which border residential properties. Exceedances of the Part 375 commercial SCOs for arsenic and lead are also reported at SS-08.

PCBs

There were no PCBs exceedances of the NYSDEC Part 375 commercial SCOs (there are no PCB standards for the CP-51 SCL); however, detectable concentrations of the PCBs (below the applicable standards) known as Aroclor 1242 and Aroclor 1254 were reported in three (3) soil samples; SS-10, SS-11, and SS-16. These products were commonly used in manufacturing processes and equipment, such as cutting oils, synthetic resins, and hydraulic fluids, and may be related to historical site use. Aroclors are also occasionally found in the urban environment and may be associated with historical fill. As shown on Figure 2, the SS-10 and SS-11 samples were collected from the sediment around the pond area



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in the northeast corner of the site (adjacent to residential properties). The SS-16 sample was collected near the southern boundary of the former foundry building.

Investigation Summary and Recommendations

The intent of the modified Phase I ESA was to assess and determine if historical operations at the site have impacted the on-site surface soil quality and whether remediation activities are warranted prior to the future redevelopment of the property. It is important to note that this investigation did not include an evaluation of subsurface soil or groundwater quality. As described herein, the surface soil sampling activities consisted of the collection and submittal of surface soil samples for the laboratory analysis of VOCs, SVOCs, PCBs, and metals. Based on the analytical data and observations made during the August 8 site visit, the investigation findings are summarized as follows:

- The former site structures have recently been demolished and the rubble and debris has apparently been hauled off site;
- At the time of the surface soil sampling activities, the site was partially graded. It is our understanding that the graded sandy soils in the vicinity of the former machine shop and foundry structures are native site soils, whereas the gravelly fill material observed on the northern portion and the southeast corner of the site was imported fill;
- SVOC impacts in the form of PAHs were detected in six (6) surface soil samples collected from various areas of the site;
- Metals impacts, including copper, lead, and arsenic exceedances of the Part 375 SCOs for commercial site use, which are found on the eastern portion of the site;
- Detectable concentrations of PCBs (below the Part 375 SCOs for commercial site use) were reported in one (1) surface soil sample near the former foundry building and in two (2) surface soil sample locations near the pond in the northeast corner of the site.

Based on the above findings, the following concerns remain:

- Environmental impacts observed in samples collected from around the pond in the northeast portion of the site are not only an on-site area of concern, but may be indicative of contamination migrating on or off-site;
- Limited surface soil impacts in the form of SVOCs and metals detected above the Part 375 SCOs for commercial site use may be indicative of subsurface soil contamination and/or groundwater contamination at the site;
- The elevated concentrations of arsenic, lead, and copper that were detected at surface soil sample location SS-8, as well as the elevated copper concentrations that were detected at surface soil sample locations SS-9, SS-10, and SS-11, represent areas of concern due to the potential exposure risks associated with the toxic metals. Therefore, it is recommended that the soils at these three sampling locations be remediated prior to the future use and development of the site.



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- The sample collected from the apparent mound of foundry waste along the eastern property boundary exhibits SVOCs and metals (specifically copper) impacts, which should be delineated (on-site and potentially off-site) and addressed;
- Based on B&L's discussions in the field with Mr. Jay Mullen, it is unclear whether any soil generated during demolition and grading activities remains on-site or it was properly characterized and hauled off-site;
- The details regarding the source of apparent fill material used during subsequent site restoration activities are unknown, as are soil conditions below this material (B&L could not sample surface soil within these areas).

It is our recommendation that additional site investigation be performed prior to Miller Mechanical Services, Inc. pursuing the purchase of the property. Additional site investigation should at a minimum include the drilling of soil borings and collection of groundwater samples, particularly in (but not limited to) the above described areas of concern, for the purpose of collecting subsurface soil and groundwater samples and in order to assess groundwater and surface water flow direction. The additional data collected can be used to reassess the above described environmental concerns (including potential impacts to adjacent residential properties) and determine what, if any, remediation activities are warranted prior to the purchase of property.

Very truly yours,

BARTON & LOGUIDICE, P.C.

A handwritten signature in black ink, reading "Stephen B. Le Fevre". The signature is written in a cursive, flowing style.

Stephen B. Le Fevre, P.G.
Managing Hydrogeologist

SBL/akg

Attachments

EXHIBIT “F”

Prepared and Forwarded by Hand Delivery

July 17, 2019

Daniel Bruno, Chairman, and Planning Board Members
City of Glens Falls
Ridge Street
Glens Falls, NY 12801

Re: Re: WWAMH "Cooper Street Apartments"
47-50 Cooper St., Glens Falls NY
JE 19-003

Dear Chairman Bruno and Planning Board Members,

This letter is an amendment of a letter dated 6/28/2019 by this office that addressed comments in a June 24th memorandum from the City Engineer. This amendment addresses additional comments received from the City Engineer in a 6/27/2019 memorandum (that was received too late to address in the 6/28 responses). (to clarify: this letter addresses 2 sets of comments received from the City Engineer, dated June 24th and June 27th):

City Engineer Comments (from both dates)
Site Plan Drawings

1. *Sheet 4 of 14 - Please specify cast iron detectable warning strips (dws). Please add a dws detail to the plans specifying material, dimensions, manufacturer and other applicable information.*

Response: A note calling for a cast iron detectable warning plate was on the latest revised drawings, and that note has since been amended. (from 6/28/19 response).

2. *Sheet 4 of 14 The existing curb along the project frontage is in very poor condition. Consider adding new concrete curb on Cooper St. to accompany the new concrete sidewalk. This will improve pedestrian safety, create aesthetic value and contain roadway drainage.*

Response: It is evident that the existing curbing on Cooper Street has significantly deteriorated, and is essentially buried due to numerous street repaving efforts. Replacing curbing now along only the WWAMH frontage could create a situation where that curbing would have to be replaced again, and lowered in elevation, when the remainder of the street is (presumably) milled down during the next repaving effort. We feel that it best that the curbing along the entire street be replaced at the time of repaving.

- 2a. *Consider extending new curb and sidewalk an additional 4 feet +/- to meet the Warren County Bike Trail.*

Response: We have extended the new sidewalk to meet the bike trail.

12 East Washington Street
Glens Falls, NY 12801

3. *Verify access and the dumpster enclosure configuration allows all necessary turning movements of a front-end loader collection truck. It is not recommended to have collection trucks backing in or out through the parking lot.*

Response: the design has been developed so that trucks would not have to back out of the site, ie: a front pickup unit would be able to access the dumpsters directly and then the truck would proceed to exit the site without backing up. (Note: the design has been modified for more efficient access; solid waste trucks will enter via the south driveway and exit via the north driveway)

4. *Sheet 7 of 14 - Add proposed top of curb / bottom of curb elevations..*

Response: sidewalk and parking area elevations were provided, however, in light of the question, we have added additional spot elevations.

5. *Sheet 7 of 14 - Include test pit / percolation test data and locations on the drawing.*

Response: The subsurface investigations performed as part of the Phase II ESA were contracted by, and should be on file with, the City. Those investigations documented existing soil conditions, by means of borings and infiltration tests. An average of the infiltration test results was used for design of the rain gardens and infiltration swales.

6. *Sheet 8 of 14 - Consult CCE or Penn State Extension for suitable vegetation for rain gardens and for location of vegetation within rain gardens.*

Response: The NYSDEC, EPA, and "University of New Hampshire Stormwater Center" literature was used to design the stormwater systems on the property. The vegetation specified was taken from those references, the Adirondack Park Agency recommendations for native vegetation, other horticultural organizations, and from our in house Landscape Architect. The vegetation was selected as suitable for rain gardens in this plant zone.

The plant lists provided for the rain gardens call for trees, shrubs, and perennials that are listed on approved native plant listings developed for use in upstate NY. Further, the specifications call for native or naturalized plants that conform to "American Standard Nursery Stock" standards from a certified nursery. (Amended 6/28/19 response)

7. *Sheet 9 of 14 - Verify all elevations prior to construction.*

Response: A note to this effect was on the plans, however, it has now been reinforced. (Taken from 6/28/19 response)

8. *Sheet 10 of 14 - Provide tracer wire and detectable warning tape with all buried, non-metallic utilities. Provide a minimum of 4" and a maximum of 12" precast concrete grade rings at manholes and storm drains.*

Response: Provided. (Taken from 6/28/19 response)

9. *Sheet 11 of 14 - Review tree planting locations within stormwater measures*

Response: A number of trees were located within rain gardens and wet swales to help manage drainage and stormwater runoff. The trees specified have been purposely selected to be suitable for wet conditions, and subsequent to our discussion with the City Engineer (7/9/19) the trees have been moved to the edges of the swale.

10. Sheet 12 of 14 – Use updated symbols for handicap parking.

Response: Updated (Taken from 6/28/19 response)

11. Drawing EC1: Area is not within Lake George Basin.

Response: EC1 is a detail sheet that provides general erosion and sediment control guidelines for all projects, and the note referenced pertains only to projects located in the Lake George basin. (Taken from 6/28/19 response).

Subsequent to our discussions with the City Engineer, we've removed the notes that pertain to Lake George.

12. Sheet 14 of 14 – Indicate on drawings where the Environmental Controls shown on this sheet are to be used.

Response: The drawings have been clarified accordingly. (Taken from 6/28/19 response)

SWPPP & Stormwater Report

13. The following elements (at a minimum) are required to be submitted to the City before a full review of the Stormwater and SWPPP can be completed.

- *Engineer's Report for Stormwater Management*
- *Pre and Post-development drainage maps showing catchment areas, ponds or reaches.*
- *Soil mapping, descriptions and soil testing results.*
- *Hydrologic and hydraulic analysis for all stormwater system components for all applicable design storms including:*
 - *Existing and Proposed condition analyses for ground cover, time of concentrations, type of flow, runoff rates volumes, velocities and surface water elevations including methodologies used and supporting calculations.*
 - *Final sizing calculations for SMP's including, contributing drainage area, storage and outlet configuration.*
 - *Stage-discharge or outlet rating curves and inflow/outflow hydrographs for applicable stormwater components.*
 - *Final analysis of potential downstream impact/effects of project.*
- *Applicable water quality, water quantity, channel protection, overbank protection and extreme storm calculations.*
- *Letter of Resolution with OPRHP on the general permit that satisfies DEC's obligation under the NYS Historic Preservation Act, Section 14.09, 9 NYCRR 428.4 for implementation of the general permit, if applicable.*
- *Completed Notice of Intent*
- *MS4 SWPPP Acceptance Form*

- *SWPPP Preparer Certification Form*
- *Owner/Operator Certification Form*

Response: The SWPPP submitted includes detailed computations of pre-existing and project runoff rates/volumes, as well as routing diagrams and subcatchment/flow path mapping for each condition. (Note: from discussions with the City Engineer, apparently the calculations did not reach the City Engineer's office, and a copy of the requested information has since been provided to that office)

A Sign off from the NYS OPRHP was included with the SEQR EAF provided with the Site Plan application.

The Notice of Intent (NOI) is normally completed following approval by the Planning Board, such that any design changes made as a result of the Board review are correctly reflected on the NOI.

The "MS4 Acceptance Form" will be executed once the City review is complete.

Our office is currently revising the preparer, owner, and contractor acknowledgments /certification forms to reflect recent discussions with the NYSDEC; those updates will be provided with the final SWPPP when submitted following Planning Board review.

Planning Board Comments

1. *Comment: Remove perimeter privacy fence from wetland area*

Response: Acknowledged; fence now relocated.

2. *Comment: Consider timer and/or motion sensors and/or dimmers on site lighting, and will security cameras be used?*

Response: Site lighting will be designed with those potential controls available, and WWAMH will manage site lighting to minimize light intensity and usage in accordance with required site security and WWAMH activities.

Security cameras will be provided.

3. *Comment: Please provide a concrete driveway apron in lieu of the asphalt shown.*

Response: Acknowledged; the asphalt apron has been removed in favor of concrete.

Public Comments received during the July 2, 2019 Planning Board meeting (both oral and written comments included):

1. *Comment: SEQR EAF contains several incorrect responses.*

Response: The draft SEQR EAF has been modified and can be reviewed by the Planning Board at the time of formal SEQR review; the modified EAF is attached.

Written Comments from by Hershberg & Hershberg in a letter dated July 1, 2019 addressed to Nathan Hall, Esq. (representing Elizabeth Miller):

Wetland Issues:

1. The SEAF (Item 8 above) says:

National Wetland Inventory identified potential wetlands at the rear of the site. Our subsequent review on 5/14/2019 indicated that a small area of wetlands exists at the extreme northeast corner of the site, and another area at the southeast corner of the site may be starting to exhibit wetland conditions. Both areas were likely not wetlands during the industrial period, however, subsequent excavations especially during site remediation efforts which included the removal of shallow soils may be causing the development of wetland conditions. Further assessment later in the growing season would be required to make better determination."

In the June 18, 2019 letter under the heading 2. Wetland the following statement is made:

Our initial observations of the site were during the past winter and although no vegetation was available to confirm wetland conditions, we observed standing water (and ice) along portions of the eastern section of the site, and especially in the northeast corner. That coupled with the SEQR EAF automated response from the NYSDEC documenting potential wetlands identified by the "National Wetlands Inventory" led us to revisit the site following frost leaving the ground. During the subsequent visit, our wetlands biologist observed conditions along the eastern section of the site that led her to believe that there are US Army Corps of Engineers (USACE) jurisdictional wetlands present in the northeast corner of the site. She also documented that due to the recent excavation of the site, wetland conditions may form in the southeast corner of the site over time. As a result of these observations, we modified the site design to move the proposed landscaped berm (buffer) away from the wetland observed in the northeast corner of the site (see attached plan).

Response: Subsequent to the July 2nd Planning Board meeting, Deborah Roberts, PhD, a wetlands biologist, visited the site on July 11, 2019 to further examine the areas noted during her initial site visit. Dr. Roberts concluded the following:

"As discussed in the field during my site visit on July, 11, 2019, I delineated a small area of wetland at the northeastern corner and northern edge of the property. This area was flagged in the field with pink flagging tape (A1 to A13).

Wetland A was dominated by cattails and willows and had standing water in as observed in May 2019. Based on the review of mapping, this wetland might not be not connected to a Water of the US (WOIUS), however, it is within 4,000 linear feet of the Hudson River, which is a traditional navigable water (TNW). Under the current USACE regulations (Clean Water Rule of 2015 or 2015 CWR) it should be assumed that this area would be regulated by the US Army Corps of Engineers (USACE) and impact to Wetland A should be avoided during construction."

"In addition, one small area of wetland vegetation was identified near flag B1, approximately 300 feet east of Cooper Street. This depression is about 15 x 20 ft in size and was noted by the surveyors as being wet. The area was dry on July 11, 2019. Based on methods in the current guidance under the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual (Environmental Laboratories, 1987) and the Interim

Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region (USACE, October 2009), this is a problem area. The soil is mapped as a well-drained Oakville series, however, previous site work has stripped the native surface soil, leaving only sub-soil over much of the site, and the vegetation has been disturbed because it has been mowed. The elevated soil around the few remaining trees is evidence of the historic soil elevation. The depression in which some wetland vegetation has established is formed by the tracks of equipment working on the site on the relatively impermeable subsoil left after construction.

Based on the definitions in the 2015 CWR, it is my opinion this small area of wetland vegetation would not be considered as a WOTUS, even if it met the definitions of a wetland or problem area, and therefore would not be regulated. The regulation (33 CFR Part 328) states:

"Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water are excluded from regulation as a WOTUS."

The wet area on the site in question is clearly a depression created by construction equipment on a portion of the property that is and was historically upland. Review of aerial photography from 2008, confirms that this location was within the active site area, behind the building in what seems to be a parking area on the site. It appears the demolition of the former structures, removal of the topsoil and subsequent grading left a small depression that ponds water during the spring. This type of water-filled depression is specifically excluded in Section 328.3 (b)(4)(v) of the 2015 CWR."

As a result of Dr. Roberts' recommendation, the site design was modified to eliminate any development (ie: any disturbance) of the wetland at the northeast corner of the site ('A' series wetland flags).

(Reference photos attached)

2. *Sheet 3 of 14 identified as "Permitting Plan" in set of drawings identified in this report as Item 13 shows a small wetland area as "USACOE Jurisdictional Wetland". This is significantly smaller than the area shown on the National Wetland Inventory Mapper. See Exhibit A. In order to determine whether the indicated wetland is accurate, the City of Glens Falls Planning Board should insist on Jurisdictional Determination by USACOE.*

Response: The National Wetland Inventory is an inventory of wetland resources based on biological features, and is generally categorized from a review of aerial photography. It does not identify regulated wetlands, but should be considered an indicator of the potential for jurisdictional (including USACE regulated) wetlands. The NWI does not document specific wetland (if present) boundaries. Essentially, listing on the NWI suggests that wetland conditions may be present and that any site so listed should be checked for jurisdictional wetlands.

In the case of 47-50 Cooper Street, the site was used industrially for many years without evidence of wetlands, and subsequent to the termination of the industrial use and the removal of buildings, the site was checked by an experienced wetland biologist. The only (likely) jurisdictional wetlands are as noted above.

Lack of a Complete SWPPP

1. Glens Falls is a MS4 community. As a MS4 community it must prepare an MS4 Annual Report. On the report filed March 9, 2019 page MCM 4 page 3 of 3 includes the following:

A. Briefly summarize the Measurable Goal identified in the SWMPP in this reporting period.
Review SWPPP's for land use, incorporate stormwater reduction into new developments, train City staff in green infrastructure and stormwater reduction, allow only knowledgeable contractors to work in the city, SMPPP compliance activities recorded, approve construction MBP's, resolve complaints, keep City and construction within the City in compliance with DEC regulations

B. Briefly summarize the observations that indicated the overall effectiveness of this Measurable Goal.

SWPPP's are reviewed, stormwater reduction and green infrastructure incorporated in new developments, regularly inspect construction sites to ensure DEC compliance, address complaints immediately.

The Erosion & Sediment Control Portion of the NYSDEC "Stormwater Pollution Prevention Plan" (SWPPP) - Item 17 above lacks information suitable to perform a "Review".

The only pages connected to the subject site are pages 1-5. The balance of the Appendices are standard materials some of which belong in a complete SWPPP. The text of SPDES GP30-15-002, the NOI (completed), the NOT and the proper Construction & Maintenance Inspection Checklists and Construction Stormwater Inspection Reports.

The Construction & Maintenance Inspection Checklists and Construction Stormwater Inspection Reports incorporated were for Stormwater/Welland Ponds, Infiltration Trench, Infiltration Basin, Sand/organic Filter, Bioretention and Open Channel. These checklists belong in the Post-construction stormwater management practice component. None of these methods are proposed. The plans show rain gardens.

Response: A SWPPP in accordance with NYSDEC requirements has been prepared for the proposed development, and the City of Glens Falls, as a NYSDEC MS4, is reviewing the SWPPP.

Post-construction stormwater management practice component SWPPP

1. In order to evaluate the stormwater management as required by the MS4 coordinator, the following would be required none of which is ascertainable from the documents reviewed:

A Stormwater Modeling and Analysis Report that includes:

- Tributary Map(s) showing pre-development conditions, including watershed/subcatchments boundaries, flow paths/routing, and design points
- Tributary Map(s) showing post-development conditions, including watershed/subcatchments boundaries, flow paths/routing, and design points and post-construction stormwater management practices.
- Results of stormwater modeling (i.e. hydrology and hydraulic analysis) for the required storm events. Include supporting calculations (model runs), methodology, and a summary table that compares pre and post-development runoff rates and volumes for the different storm events.

- Summary table, with supporting calculations, which demonstrates that each post-construction stormwater management practice has been designed in conformance with the sizing criteria included in the Design Manual.
- Identification of any sizing criteria that is not required based on the requirements included in Part I.C. of GP 30-15-002

Response: A SWPPP in accordance with NYSDEC requirements was prepared for the proposed development and the City of Glens Falls, as a NYSDEC MS4, is reviewing the SWPPP.

2. *Soil testing results and locations (test pits, borings) and infiltration test based upon the design proposed. These should measure the infiltration at the level of the bottom of the rain garden as detailed Landscape Details – Sheet D3 in latest Plan Set (See Item 13 above). The base soil has been identified in the Soil Survey (See Appendix 3) as Oakville loamy fine sand, a Hydrologic Class A soil. This must be verified by infiltration tests. Also the depth to groundwater should be determined.*

Without these items it is impossible to determine what storage is accommodated in the rain gardens, elevation of stormwater for various storms. Also, no documentation is provided that the RRV Overbank Flow Criteria or Extreme Flood Criteria is met for the site. The Green Infrastructure Worksheets must be completed.

Response: Detailed site investigations completed for the City of Glens Falls several years ago were utilized for design of the project's stormwater management system.

3. *Because the site is identified as being in an archeologically sensitive area (See SEAF – Item 8 above) a letter of No Effect or No Adverse Effect should be required from NY State Historic Preservation Office (SHPO).*

Response: A sign off letter from NYS OPRHP was included with SEQR EAF.

Selected Treatment System – Rain Gardens

1. *The Grading & Stormwater Plan Sheet SW3 and Stormwater Details Sheet D1 in latest Plan Set (See Item 13 above) shows 7 rain gardens but the details only show 3 rain gardens. The plan does show contours but the details do not relate to actual ground or water levels. The depicted water level is not tied to a storm of a certain frequency.*

Response: We do not understand the comment. A total of 8 rain gardens are provided on the design, and a detailed grading plan as well as construction details have been provided. [Note: water levels in the rain gardens will vary depending on the severity of the storm event and on the season, however the water level indicated on detail A on drawing D1 indicates the elevation of the rain garden overflow to the City stormsewer.]

2. *Rain Gardens are an infiltration practice. Infiltration practices are not permitted on fill sites. The October 7, 2013 letter (See Item 13 above) notes that the "depth of historical fill varied from 0.5 feet to at least 2 feet". The October 28, 2015 letter (See Item 4 Above) notes that "the source of the apparent fill material used during site restoration..." would imply that additional fill was imported between 2013 and 2015.*

Response: Although there are some areas of the site that were likely filled years ago, during industrial use, that fill has stabilized and should not disqualify the site for implementation of stormwater infiltration practices. [Note: during removal of surficial soils at the time of building demolition, some of the fill was removed.]

3. *The details on Sheet D1 in latest Plan Set (See Item 13 above) show that the clearance from the bottom of the raingarden of 2 feet from groundwater. Although a number of borings and test pits were done on the site, none determined the stabilized groundwater level. The October 28, 2015 letter (See Item 4 above) includes in its recommendation that "(A)dditional should at least include the drilling of soil borings and installation of groundwater monitoring levels".*

Response: Groundwater was documented during prior site investigations, and the level is likely perched and shallow during late winter/early spring; however, during remaining times of the year, groundwater is likely more than 5 below grade.

4. *Finally, if the site retains the levels of Semi-Volatile Organic Compounds and Metals showed exceed CP-51 Soil Cleanup Guidance levels. The site without full mitigation may qualify as a "Hotspots" which may not be used for infiltration practices. In addition, the Letter dated June 7, 2018 (See Item 5 above) recommends that "areas designated for vegetable gardens (if any), existing soil that may potentially be impacted should be removed to a depth of approximately two (2) to three (3) feet and replaced with clean soil from an office source....". The resident garden only shows 12" of loamy soil to be placed.*

Response: The proposed site use is not considered a NYSDEC "hotspot".

Any new gardens at the site will be constructed of imported soil and in raised beds.

If you have any questions, do not hesitate to contact us at 518-792-2907 or via email at t.jarrett@jarrettengineers.com.

Sincerely,

JARRETT Engineers, PLLC



2019.07.17

14:04:05 -04'00'

H. Thomas Jarrett, P.E.
Principal

Encl.:

- SEQR (18)
- Photos (18)
- JE drawings (1-14) entitled: Cooper Street Apartments Warren Washington Assoc. For Mental Health, Inc. Revision C dated 07-17-19

Ecopies w/encl: Steve Gurzler, P.E.; GF City Engineer
Andrea Deepe; CEO, WWAMH
Owen Neitzel, R.A.; Project Architect